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2 A. -- Highland's responsibility.

3 Highland's responsibility.

4 Q. Who, at Highland, was responsible  
5 for drafting this section of the audit report?

6 A. I -- I don't know the answer to  
7 that. Again, there was a team who worked on  
8 this. And I don't know, you know, whether it  
9 was the staff or the manager.

10 Again, this is where I let the teams  
11 manage. And, you know, there may be a  
12 corporate accountant who worked on this. I  
13 just -- you know, I wasn't part of that process  
14 to give that person experience. I don't know.

15 Q. Do you recall having any  
16 communications with anybody at any time  
17 concerning this section of the report?

18 A. Yeah, I don't recall.

19 Q. Do you recall whether you ever told  
20 anybody at any time that any aspect of this  
21 section of the report was inaccurate or  
22 incomplete?

23 A. I don't recall.

24 Q. As you sit here today, do you have  
25 any reason to believe that this section of the



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2 MR. MORRIS: If we could go the  
3 other way, La Asia. We don't need Okada.  
4 We're going to have to thread the needle.  
5 Okay. Good, perfect.

6 Q. Do you see those five paragraphs  
7 certain the four affiliates and Mr. Dondero as  
8 we've been referring to today?

9 A. Yes.

10 Q. Okay. And do you see at the end of  
11 every paragraph it states, quote: A fair value  
12 of a partnership's outstanding notes receivable  
13 approximates the carrying value of the notes  
14 receivable?

15 A. Yes, I see that.

16 Q. Do you have an understanding of what  
17 that means?

18 A. Yes.

19 Q. What is your understanding of that  
20 sentence?

21 A. It is the -- again, the -- the fair  
22 value, right, which is -- which is what the --  
23 what Highland could sell that asset for. This  
24 statement is comparing the fair value of the  
25 notes to the carrying value, so the carrying

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2 value is the line item that you showed me  
3 earlier that is in Notes and Other Amounts Due  
4 from Affiliates.

5 Q. Okay. Is another way to say this is  
6 that the fair market value of the notes equals  
7 the principal amount and -- withdrawn.

8 Is the fair way to interpret this  
9 that the fair market value of the notes equals  
10 all remaining unpaid principal and interest due  
11 under the notes?

12 MS. DANDENEAU: Object to the form.

13 MS. DEITSCH-PEREZ: Objection, form.

14 A. I don't know the answer to that,  
15 because I don't recall where -- where any --  
16 where -- in what line item was the interest  
17 component reported.

18 Q. All right. Well, if we look in this  
19 audit report, you will see in the middle of the  
20 first paragraph, for example, it states that as  
21 of December 31st, 2018, total interest and  
22 principal due on outstanding promissory notes  
23 was approximately \$5.3 million.

24 Do you see that?

25 A. I do.

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Q. Is that the carrying value or the

A. That would be the carrying value --

Q. And is the last --

A. -- in my opinion.

Q. Okay. And it is in your opinion as

chief financial officer of Highland during

s an educated opinion?

A. I'm reading this at face value. I'm

Q. Okay. And does the last sentence

MS. DANDENEAU: Objection to form.

MS. DEITSCH-PEREZ: Objection, form.

A. Again, this note to the financial

Q. Correct.

A. If the interest component is

rted elsewhere on the balance sheet, you

it -- it -- it could be off. Again, I

I have the detail. I don't know, but yes,

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2 look, I mean, if you -- I mean, if you are  
3 saying the 5.3 million is in the notes and  
4 other amounts due from affiliates, then the  
5 last statement is saying the fair value  
6 approximates 5.3 million. That is what that  
7 last sentence is saying.

8 Q. Do you see in the middle of the  
9 first paragraph -- not in the middle, the next  
10 to last sentence there is a statement that the  
11 partnership will not demand payment on amounts  
12 that exceed HCMFA's excess cash availability  
13 prior to May 31st, 2021.

14 Do you see that?

15 A. I do.

16 Q. Do you know when Highland agreed not  
17 to demand payment as described in that  
18 sentence?

19 A. I don't know specifically.

20 Q. Do you know why Highland agreed not  
21 to demand payment on HCMFA's notes until May  
22 2021?

23 A. Yes.

24 Q. Why was that decision made?

25 A. You know, well, it -- it -- that

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2 decision was made as to not put HCMFA into a  
3 position where it didn't have sufficient assets  
4 to pay for the demand note.

5 Q. And at the time the agreement was  
6 entered into, pursuant to which the partnership  
7 wouldn't demand payment, did HCMFA have  
8 insufficient assets to satisfy the notes if a  
9 demand had been made?

10 MS. DANDENEAU: Objection to form.

11 A. I don't have HCMFA's financial  
12 statements in front of me as of 12/31/18.

13 Q. Was there a concern that HCMFA would  
14 be unable to satisfy its demands under the  
15 notes if demand was made?

16 MS. DANDENEAU: Objection to form.

17 A. Well, there is -- I don't recall --  
18 I mean, there is something, right, in place to  
19 basically not demand payment until May 31, 2021  
20 as detailed here.

21 Q. And who made the decision to enter  
22 into -- who made the decision on behalf of  
23 Highland not to demand payment until May 31st,  
24 2021?

25 A. I'm trying to remember. I don't

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remember exactly -- I don't remember if it was myself or -- or Jim Dondero who -- who -- there was -- there was something signed, from what I recall, that -- that -- that backed up this line item in the -- in the notes I'm -- look, I'm, I'm --

Q. We will get to that.

A. You --

Q. I'm just --

A. You have -- I mean --

Q. We're going to give that to you.

I'm going to give that to you.

A. You -- you -- you have all the documents. I don't have the documents, and that is what makes it so hard. I don't have any documents to prepare for this deposition; right? You have all -- I don't -- I don't -- I don't remember, but, you know, again, it would probably be myself or Jim.

Q. Do you know if Highland received anything in return for its agreement not to make a demand for two years?

A. I don't -- I don't think it referred anything.



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Q. And did you and Mr. Dondero discuss HCMFA's ability to satisfy the notes if a demand was made at the time this agreement was entered into?

MS. DANDENEAU: Objection to form.

A. I don't -- I don't -- I don't recall having a specific conversation, if I did, or -- or David Klos.

Q. Okay. I'm just asking if you recall any conversations that you had.

A. I don't recall.

Q. Okay. Do you know why Highland loaned the money to HCMFA that is the subject of the notes described in this paragraph?

A. I don't remember specifically why 5.3 million was loaned. I mean, I -- it would have to be put in the context.

Q. Do you have any recollection at all as to why Highland ever loaned any money to HCMFA?

A. Yes.

MS. DANDENEAU: Objection to form.

Q. What do you remember about that?

A. There was a Highland Global

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2 Allocation Fund, which was a -- a fund managed  
3 by Highland Capital Management Fund Advisors.  
4 There was a -- we -- I'm just telling you,  
5 there was -- there was -- there was a -- a  
6 ultimately a NAV error found in this fund while  
7 it was an open-ended fund and, you know, there  
8 were amounts owed by the advisor in -- in  
9 relation to that NAV error.

10 There were also, for the same fund,  
11 that same fund was ongoing an  
12 open-end-to-close-end conversion, and as part  
13 of that proposal, shareholders who voted for  
14 the conversion received compensation from the  
15 advisor.

16 Q. All right. Now, the events that  
17 you're describing occurred in the spring of  
18 2019; right?

19 A. These started back -- I think, I  
20 mean --

21 Q. I apologize.

22 A. -- that -- I mean, the answer to  
23 that is no.

24 Q. I apologize, the loans that were  
25 made in connection with the events that you're



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2 what is the reason you recall Highland lending  
3 money to NexPoint?

4 A. I mean, I was just -- I just -- I  
5 just recall. I mean, I just -- I don't  
6 remember why.

7 Q. I understand. And I'm asking you if  
8 you recall --

9 A. Oh, why -- I thought you say --  
10 NexPoint Advisors was launching a fund which  
11 is -- I believe that the legal name is NexPoint  
12 Capital, Inc. And it -- it provided a  
13 co-invest into that fund.

14 And, from what I remember, the --  
15 the -- that NexPoint borrowed money from  
16 Highland at the time to make that co-invest.

17 Q. So this was an investment that  
18 NexPoint was required to make; is that right?

19 MS. DANDENEAU: Objection to form.

20 A. I don't know if it was required to  
21 make, I don't recall that, or if it just made  
22 it.

23 Q. Okay. But your recollection is that  
24 NexPoint made an investment and they borrowed  
25 money from Highland to finance the investment.

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2 Do I have that right?

3 A. Yes.

4 Q. How about HCRE? Do you know why  
5 HCRE borrowed money from Highland?

6 A. I don't remember specifically.

7 Q. Do you remember generally?

8 A. Generally, yeah -- I mean, yes.

9 Q. Can you tell me your general  
10 recollection as to why Highland loaned money to  
11 HCRE?

12 A. For -- for -- for investment  
13 purposes.

14 Q. So HCRE made the investment and it  
15 obtained a loan, or loans, from Highland in  
16 order to finance that investment or those  
17 investments.

18 Do I have that right?

19 A. I mean, I -- you know, generally.

20 Q. Okay. How about Highland Management  
21 Services, Inc.?

22 Do you have any recollection as to  
23 why HCMS borrowed money from Highland?

24 A. Generally.

25 Q. What is your general recollection as

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2 to why HCMS borrowed money from Highland?

3 A. For -- for investment purposes.

4 Q. So it is the same thing, HCMS wanted  
5 to make investments and it borrowed money from  
6 Highland in order to finance those investments;  
7 is that right?

8 A. I mean, yes, generally. I mean, I  
9 can't -- I don't -- on the services, there --  
10 there are several loans in these schedules.  
11 You know, I can't remember why every single one  
12 of these were made, but I would say, yeah, I  
13 mean, generally.

14 Q. Okay. I appreciate that.

15 MR. MORRIS: Let's go to the page  
16 with Bates No. 251. La Asia, are you  
17 there?

18 MS. CANTY: Sorry, John. It went  
19 out for a minute. Can you say that again.  
20 I don't know what is going on.

21 MR. MORRIS: The page with Bates  
22 No. 251, can we go to that.

23 MS. CANTY: Yes, sorry.

24 MR. MORRIS: Keep going to the  
25 bottom. Yeah, there you go.







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2 if -- you know, what -- if that 7.4 million was  
3 solely attributable to the NAV error.

4 Q. Okay. But there is no question that  
5 Highland told PricewaterhouseCoopers that over  
6 the course of 2019 HCMFA issued promissory  
7 notes to the partnership in the aggregate  
8 amount of \$7.4 million; correct?

9 A. In the course of the audit, we would  
10 have produced all promissory notes in our  
11 possession, including the ones that are  
12 detailed here.

13 Q. Do you recall that you signed the  
14 two promissory notes that are referenced in  
15 that provision?

16 MS. DANDENEAU: Objection to form.

17 A. I didn't recall initially but I've  
18 been reminded.

19 Q. Okay. And -- and do you recall that  
20 those notes are dated May 2nd and May 3rd,  
21 2019?

22 A. Yes.

23 Q. So that was just a month before the  
24 audit was completed; correct?

25 A. Yes. I think we had a June 3rd



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2 statements, yes, they -- they -- they should be  
3 and they were likely disclosed.

4 Q. Now, there is no statement  
5 concerning the 2019 notes about the forbearance  
6 that we looked at in the affiliated note  
7 section of the report; right?

8 MS. DANDENEAU: Objection to form.

9 Q. I'll withdraw. That was bad.

10 Do you recall when we were looking  
11 at the paragraph concerning HCMFA earlier it  
12 had that disclosure about the agreement whereby  
13 Highland wouldn't ask for demand on the -- on  
14 the HCMFA notes?

15 A. Yes.

16 Q. That forbearance disclosure is not  
17 made with respect to the 2019 notes; right?

18 A. Not -- look, not that I can recall,  
19 unless -- unless it was done at a subsequent  
20 day.

21 Q. Right. And it is not in the  
22 subsequent event section that we're looking at  
23 right now where the 2019 notes are described;  
24 right?

25 A. Right. But this is through

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2 June 3rd. It could have been done on June 4th.

3 I don't -- I don't -- I don't recall.

4 Q. Okay.

5 MR. MORRIS: Can we put up on the  
6 screen the HCMFA audit report. And while  
7 we're --

8 MS. DANDENEAU: What exhibit is  
9 this?

10 MR. MORRIS: La Asia, what number is  
11 that?

12 MS. CANTY: 45.

13 MR. MORRIS: So this will be marked  
14 as Exhibit 45.

15 (Exhibit 45 marked.)

16 MS. CANTY: Yeah, and I will put it  
17 in the chat.

18 MS. DANDENEAU: Thank you.

19 Q. Okay. All right. Do you see that  
20 this is the consolidated financial statements  
21 for HCMFA for the period ending 12/31/18?

22 A. Yes.

23 Q. As the treasurer of HCMFA at the  
24 time, did you have to sign a management  
25 representation letter similar to the one that





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MR. RUKAVINA: Objection, legal conclusion, speculation and form.

MR. MORRIS: Okay. Can we go to Exhibit 2.

Q. Do you see that this is a promissory note dated May 3rd, 2019 in the amount of \$5 million?

Q. Do you believe this is also a demand note if you look at Paragraph 2?

Q. And do you see that HCMFA is the maker, and Highland is the payee?

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2                    A.        Yes.

3 Q. And if we go to the bottom, can we  
4 just confirm that that is your signature?

5                    A.        Yes.

6 Q. And together these notes are the  
7 notes that are referred to both in Highland and  
8 HCMFA's audited financial reports in the  
9 subsequent event sections; correct?

10 MS. DANDENEAU: Objection to form.

11           A.       They -- they -- they totaled  
12   \$7.4 million, so presumably, yes.

13 Q. Okay. And you were authorized to  
14 sign these two notes; correct?

15 MR. RUKAVINA: Objection, legal  
16 conclusion.

17           A.       Yeah. I mean, I'm -- I was the  
18   officer of -- of HCMFA. You know, I -- I'm not  
19   the legal expert on -- on what that -- what  
20   that confers to me or what it doesn't. I mean,  
21   that is my signature on the notes.

22 Q. And you believed you were authorized  
23 to sign the notes; is that fair?

24           A.     I signed a lot of documents in my  
25     capacity, just because it is operational in





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would have been drafted by somebody in the  
legal department?

MS. DEITSCH-PEREZ: Object to the

A. Yes.

Q. Okay. And do you know who would have instructed -- do you have any knowledge as to who would have instructed the legal department to draft these notes?

MS. DEITSCH-PEREZ: Object to the

A. It was whoever was working -- I mean, it was likely someone on the team. I mean, I don't remember exactly on every note or every document, but, again, a lot of these things of this nature -- they're operational in nature -- were handled by the team.

The team knows to -- I mean, we don't draft documents. We're not lawyers. We're not attorneys. It is not what I do or accountants do.

So they are always instructed to go  
and -- and go to the legal team to get  
documents like this drafted. Also, when you go



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to the legal team, the -- you know, we always loop in compliance. And compliance -- when you go to the legal team, compliance is part of legal team. They're made aware of -- of -- of these types of transactions.

Q. And do you believe that you had the -- withdrawn.

Did you ever tell Mr. Dondero --  
(inaudible) -- did you see those?

A. Sorry.

MS. DEITSCH-PEREZ: I did not hear the end of that question.

Q. Did you ever tell Mr. Dondero that you signed these two notes?

A. I don't recall ever -- no, I don't recall having a conversation with him.

Q. Did you ever discuss these two notes with him at any time?

A. The conversation, I recall, was what I described earlier. And that is the only time I recall ever discussing this.

Q. Okay. But the corporate accounting group had a copy of this -- of these two notes. And pursuant to the audit process, the







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2 certificate before?

3            A.     I have.

4 Q. Do you have a general understanding  
5 of what an incumbency certificate is?

6           A.     I have a general understanding.

7 Q. What is your general understanding?

8           A.       You know, those -- my general  
9     understanding is that the incumbency  
10    certificate basically lists folks that can --  
11    are like authorized signers.

12 Q. Okay. And do you see that this is  
13 an incumbency certificate for Highland Capital  
14 Management Fund Advisors, L.P.?

15           A.       Yes.

16 Q. Okay. And if we could scroll down  
17 just a little bit, do you see that it's dated  
18 effective as of April 11th, 2019?

19           A.     Yes, I see that.

20 Q. Okay. And is that your signature in  
21 the middle of the signature block?

22           A.    Yes, it is.

23 Q. And by signing it, did you accept  
24 appointment as the treasurer of HCMFA effective  
25 as of April 11th, 2019?

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A. Again, I'm not the legal -- I don't know if this makes me the treasurer or the appointment. I don't know -- I don't know that, so I don't -- I don't know if that document -- again, I think -- again, I'm not the legal expert. I think isn't there -- aren't there other legal documents that detail who the officers are that could be incorporated or things like that? Again, I don't want to play armchair attorney here.

Q. I'm not asking you for a legal conclusion. I'm asking you for your knowledge and understanding. When you signed this document, did you understand that you were accepting an appointment as the treasurer of HCMFA?

MS. DANDENEAU: Objection to form.

MS. DEITSCH-PEREZ: Objection, form.

A. Again, I don't think this -- that wasn't my understanding. I don't think this makes -- this document makes me the treasurer.

Q. What do you think this document -- why did you sign this document?

MS. DEITSCH-PEREZ: Objection to







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Q. Sir, I'm asking you a very simple question.

Q. You testified -- you testified that  
became the acting treasurer of HCM --  
A; correct?

Q. How did that happen?

MR. MORRIS: I can't wait to do this courtroom. Good God.

A. I don't know the exact process of that happened.

MR. MORRIS: You know what --



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A. I'm not sure I understand the question. I wasn't -- I mean, I'm -- I'm the current acting treasurer.

MS. DANDENEAU: Objection to form.

Q. Did anybody ever tell you at any time that you were not authorized to sign the promissory notes that we looked at before?

Q. Did anybody ever tell you at any time that you should not have signed the two dissonant notes that we looked at before?

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2 A. Not that I recall.

3 Q. Did you ever tell anybody at any  
4 time that you weren't authorized to sign the  
5 two promissory notes that we looked at before  
6 lunch?

7 A. Not that I recall.

8 Q. Did you ever tell anybody at any  
9 time that you made a mistake when you signed  
10 the two promissory notes that we looked at  
11 before lunch?

12 A. Not that I recall.

13 Q. As you sit here right now, do you  
14 have any reason to believe that you were not  
15 authorized to sign the two documents that we  
16 looked at before lunch?

17 MS. DANDENEAU: Objection to form.

18 A. If -- if this is the -- the valid  
19 incumbency certificate, I mean, this does --  
20 this does detail who the signers are.

21 Q. Okay. And looking at that document,  
22 does that give you comfort that you were  
23 authorized to sign the two promissory notes  
24 that we looked at before lunch?

25 MS. DEITSCH-PEREZ: Object to the







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2 Q. Sometime in 2021?

3 A. Yes.

4 Q. Do you remember what payment he was  
5 referring to?

6 A. It was the -- the payment made in  
7 January of 2021 or -- yeah, January of -- of  
8 this -- January of 2021.

9 Q. Okay. So did anybody ever tell you  
10 at any time that any payment that was made  
11 against principal --

12 A. And -- and -- and -- hold on, and it  
13 may have been other -- again, it may have been  
14 that payment or -- or there may have been what  
15 he was explaining, a misapplication of prior  
16 payments as well.

17 Q. Can you -- can you give me any  
18 specificity -- withdrawn.

19 Withdrawn. Can you tell me  
20 everything that Mr. Sauter told you about --  
21 about errors in relation to payments made  
22 against principal and interest due under the  
23 NexPoint note?

24 MS. DANDENEAU: Can I just --

25 MR. RUKAVINA: Hold on. Hold on.



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2 I'm going to object here, and I'm going to  
3 instruct the witness not to answer  
4 depending on the discussion that you had --  
5 Mr. Waterhouse, I'm the lawyer for  
6 NexPoint, and as everyone here knows, D.C.  
7 Sauter is in-house counsel.

8 So if you and Mr. Sauter were having  
9 a factual discussion and him preparing his  
10 affidavit, et cetera, then go ahead and  
11 answer that. But if you were having a  
12 discussion as to our legal strategy in this  
13 lawsuit, or anything having to do with  
14 that, then do not answer that.

15 And if you need to talk to either  
16 your counsel or me about that, then we need  
17 to have that discussion now.

18 A. Okay. Yeah, I don't -- I don't  
19 really know how to make that distinction, so  
20 maybe I need to talk to counsel before I  
21 answer, or if I can answer.

22 Q. Let me just ask you this question:  
23 Did -- did you have any conversation with  
24 Mr. Sauter about any payment of principal and  
25 interest prior to the time that you left

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Highland's employment, or did it happen after  
you left Highland's employment?

A. I don't -- I don't recall if -- I don't recall. I mean, it was sometime in 2021. I don't remember if it was before or after I was let go from Highland.

Q. Okay. So -- so nobody told you prior to 2021 that any error or mistake was made in the application of payments against principal and interest due on the NexPoint note. Do I have that right?

A. Yeah, I don't -- I don't recall this being in 2020.

Q. Okay. And it didn't happen in 2019; correct?

A. I don't recall that happened.

Q. And it didn't happen in 2018; correct?

A. I don't -- I don't recall that happening.

Q. And it didn't happen in 2017; correct?

A. I don't recall.

Q. But -- but you believe the

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A. I'm not aware.

MS. DANDENEAU: Objection to form.

Q. Okay. The advisors' agreements with the retail funds are subject to annual renewal; correct?

A. Yes.

Q. And do you participate in the renewal process each year?

A. Yes.

Q. What role do you play in the renewal process?

A. I'm -- I'm asked by the retail board to walk-through the advisors financials.

Q. And do you do that in the context of a board meeting?

A. Yes, it is -- yes, it is typically done in a board meeting.

Q. And do you recall the time -- does -- does the renewal process happen around





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2 Q. And then do you see that  
3 Ms. Thedford includes you on the email string  
4 on Tuesday, October 6th, at 5:52?

5                    A.        Yes.

6 Q. And she asks you and Dave Klos and  
7 Kristin Hendrix for advice on that particular  
8 Request No. 2 that I have just read; right?

9                    A.        Yes.

10 Q. Okay. Can you tell me who  
11 Ms. Thedford is?

12           A.       She was an attorney that was in the  
13   legal group.

14 Q. At Highland Capital Management,  
15 L.P.?

16           A.       I'm -- I'm -- I'm -- I don't  
17       remember if she was an employee of Highland or  
18       any of the advisors.

19 Q. Okay. Do you know if she served as  
20 the corporate secretary for both HCMFA and  
21 NexPoint?

22           A.       Yes.

23 Q. And -- okay.

24 Do you know whether Ms. Thedford  
25 held any positions in relation to the retail













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Did -- do you know if anybody ever answered the retail board's question that was Number 2?

A. I don't -- I can't say for sure.

Q. Okay. Do you recall -- I think you testified earlier that you walked through the advisors' financials with the retail board; correct?

A. Yes.

Q. And as part of that process, did you disclose to the retail board the obligations that NexPoint and HCMFA had to Highland under promissory notes?

A. The retail board, as I stated earlier, receives financial information, balance sheet, income statement information from the advisors. That information is provided to the retail board in connection with the 15(c) process.

So any notes between the advisors and the Highland would be -- anything would be detailed in those financial statements.

Q. Do you recall in 2020 ever speaking with the retail board about the advisors'



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obligations under the notes to Highland?

MS. DANDENEAU: Objection to form.

MS. DEITSCH-PEREZ: Object to the

A. I don't recall specifically.

Q. Do you have any general recollection of discussing with the retail board the advisors' obligations to Highland under the notes that they issued?

MS. DANDENEAU: Object to the form.

MS. DEITSCH-PEREZ: Object to the form.

A. I just recall generally just -- it is just -- I present the financial statements, and if they have questions, I answer their questions and walk them through.

I don't recall what they asked. I don't recall where the discussion went. I don't recall anything of that nature.

Q. Okay. Do you know if anybody on behalf of HCMF -- HCMFA ever told the retail board that HCMFA had no obligations under the two 2019 notes that you signed? Withdrawn.

Do you know whether anybody on

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behalf of HCMFA ever told the retail boards that you weren't authorized to sign either of the two 2019 notes?

MS. DANDENEAU: Objection to form.

A. I'm not aware.

Q. Are you aware of anybody on behalf of HCMFA ever telling the retail boards that your execution of the two 2019 notes was a mistake?

MS. DANDENEAU: Objection to form.

A. I'm not aware.

Q. Are you aware of anybody on behalf of HCMFA ever telling the retail boards that HCMFA did not have to pay the amounts reflected in the two notes that you signed in 2019?

A. I'm not aware.

Q. Do you know whether anybody ever told the retail boards -- withdrawn.

Do you know whether anybody ever told the retail boards that Highland has commenced a lawsuit to recover on the two notes that you signed in 2019?

A. I'm not aware.

Q. Are you aware of anybody informing

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the retail boards that Highland has sued to  
recover on the NexPoint note?

A. I'm not aware.

Q. Do you know whether anybody ever told the retail board that Highland had declared a default with respect to the two HCMFA notes that you signed in 2019?

A. I'm not aware.

Q. Are you aware of anybody ever informing the retail boards that Highland had declared a default under the NexPoint note?

A. I'm not aware.

Q. Are you aware of anybody telling the retail board that Highland made a demand for payment under the 2019 notes that you signed on behalf of HCMFA?

A. I'm not aware.

Q. Let's -- let's see if there is a response to Ms. Thedford's email, if we can scroll up.

Do you see you responded to Ms. Thedford five minutes after she provided the draft response to you?

A. Yes.



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MS. DANDENEAU: Objection to form.

Q. Okay. And does Mr. Norris hold any positions, to the best of your knowledge, in connection to any of the retail funds?

Q. How about Mr. Post, do you know whether Mr. Post holds any position in either of these advisors?

Q. What is your understanding of the positions that Mr. Post holds in relation to advisors?

A. He is an employee of NexPoint  
sors. He is also the chief compliance  
cer for -- for NexPoint.

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financials about Highland's agreement not to  
make demand upon HCMFA until May 2021; correct?

A. Correct.

Q. And then -- and then the next thing you write is that the attorneys think that BK doesn't change that, but don't know for sure at the end of the day.

Do you see that sentence?

A. Yes.

Q. Which attorneys were you referring to?

A. I don't remember.

Q. Did you have a conversation with attorneys concerning whether the bankruptcy would change or alter in any way the agreement not to make a demand under the HCMFA note?

A. Look, yeah, I mean, I don't specifically remember, but generally, I mean, it is in this email. I don't -- I don't -- I don't -- I don't remember who I talked to or, you know, was it inside counsel, outside counsel, but obviously I talked to somebody.

Q. Do you have any recollection --

A. Well, I don't even know if it's --



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actually, it may not even have been me. I say the attorneys in, you know, a lot of -- like I talked about the team.

It could have been someone on the team, like, hey, we need to run this down, and maybe they talked to attorneys again and relayed that information to me.

So I really don't know if I spoke or someone else did or -- or, I mean, and maybe it wasn't even from corporate accounting. Maybe it was, you know, other -- I'm kind of summarizing, you know, again, so I don't really know -- I can't really say for sure. I don't remember how I came about of this knowledge.

Q. I appreciate your efforts, Mr. Waterhouse, but I will just tell you that if I ask a question and you don't know the answer or you don't recall, I'm happy to accept that. I don't -- I don't want you to speculate, so I want to be clear about that. So I appreciate it.

Let me just ask you simply: Do you know what attorneys -- can you identify any of the attorneys who thought that the bankruptcy



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they have liabilities on them that exceed assets.

So the retail board has asked, okay, you know, how -- you know, if -- if these liabilities come due or they're payable, you know, how does that come about?

And, you know, the response is, well, the advisors have the -- the full faith and backing from -- from Jim Dondero.

Q. And how did you know that the advisors had the full faith and backing from Jim Dondero? What was the basis for that statement that you made to the retail board?

A. I talked to Jim about it at some point in the past.

Q. And did you tell Mr. Dondero that you were going to inform the retail board that the advisors had his full faith and backing before you actually told that to the retail board?

A. I don't recall having that conversation.

Q. Do you recall if you ever informed Mr. Dondero that you had disclosed or told the

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MS. DEITSCH-PEREZ: Object to the form.

Q. When you told this to the board, was Mr. Dondero participating in the discussion?

Q. Withdrawn. Was it not -- withdrawn.

A. I believe I was at home.

MS. DEITSCH-PEREZ: Object to the form.

A. I don't recall everyone on the call.

Q. Can you identify anybody who was on

















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A. It is something like this, but I don't think it was this specific document.

Q. Well, but this document does say in the last sentence that Highland agreed not to seek -- not to demand payment from HCMFA prior to May 31, 2021; right?

A. Yes.

Q. And are you aware of any other document that was ever created pursuant to which Highland agreed not to demand payment on amounts owed by HCMFA before May 31, 2021?

A. Hold on. Are you asking, am I aware of a document that by HCMFA that basically says otherwise?

Q. No. Let me try again.

Are you aware of any other document pursuant to which -- pursuant to which Highland agreed not to make a demand on HCMFA until May 31st, 2021?

A. I'm -- I think there was something in connection with -- with the -- with the audit that basically says the same thing.

Q. Okay. And do you think that the audit is referring to this particular document?











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As the treasurer of HCMFA, did you believe that -- do you believe that statement was true and accurate at the time it was rendered?

A. I mean, it -- it -- the answer to that is I really didn't have any -- I didn't have an opinion really.

Q. Did you do anything to educate yourself in April of 2019 on the issue of whether HCMFA could repay the amounts that it owed to Highland should they become due?

A. I don't believe so.

Q. Did you at any time form any opinions as to HCMFA's ability to repay all amounts due to Highland should they become due?

A. Not really. I guess I don't...

Q. Well, you told the retail board that HCMFA's liabilities exceeded their assets in 2020; correct?

A. Yes.

Q. Based on the work that you did to prepare for the retail board, did you form any view as to whether HCMFA would be unable to repay the amounts that it owed to Highland

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MS. DANDENEAU: Objection to form.





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something has changed -- to my knowledge, it hasn't changed, but it could have changed.

Q. When you say that the advisors have the full faith and backing from Mr. Dondero, did you intend to convey that, to the extent the advisors were unable to satisfy their obligations as they become due, Mr. Dondero would do it for them?

MS. DANDENEAU: Object to the form.

MS. DEITSCH-PEREZ: Object to the form.

And, John, we have given you a lot of leeway here but this does not seem relevant to this case. You seem sort of taking a complete sort of diversion into the allegations and the complaint just filed on Friday, and so I would ask you to move on because --

MR. MORRIS: And I will tell you --  
I will tell you that I have never read that  
complaint cover-to-cover. I have nothing  
to do with the prosecution of those claims.  
And this issue that we're talking about  
right now is related solely to the





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2 Q. Did you ever inform PwC that HCMFA's  
3 liabilities exceeded its assets?

4 MS. DANDENEAU: Object to the form.

5           A.       I don't -- I don't think I told  
6   them.  I mean, they -- they audited the  
7   financial statements.

8 Q. Did -- do you know if anybody on  
9 behalf of Highland ever informed  
10 PricewaterhouseCoopers that HCMFA may be unable  
11 to repay amounts owing to Highland, should they  
12 become due?

13 MS. DANDENEAU: Objection to form.

14           A.       Yes.   Again, I think I testified  
15   earlier that -- that this was communicated to  
16   the auditors.

17 Q. Ideally --

18           A.       I don't know who exactly did that.  
19       I don't recall doing it, but, yeah, it was --  
20       it was communicated. And that is why -- I  
21       mean, there is a disclosure in the financial  
22       statements; right?

23 Q. There is, and that disclosure  
24 relates to the last sentence of this document;  
25 correct?



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2 A. Yes.

3 Q. Do you recall looking in the  
4 document and seeing anything that was disclosed  
5 with respect to the sentence above that?

6 A. No.

7 Q. Do you know whether anybody on  
8 behalf of Highland ever informed  
9 PricewaterhouseCoopers that HCMFA expects that  
10 it may be unable to repay amounts due and owing  
11 to Highland should they become due?

12 MS. DEITSCH-PEREZ: Object to the  
13 form. I think that is the third time.

14 A. I don't recall. Again, as I said,  
15 we -- all of this was given to the auditors.

16 Q. Do you know if Highland received  
17 anything of value in exchange for its agreement  
18 not to demand payment on amounts owed by HCMFA  
19 prior to May 31st, 2021?

20 MS. DEITSCH-PEREZ: Object to the  
21 form. That is the second time.

22 MS. DANDENEAU: Object to the form.

23 A. I have answered this question.

24 MR. RUKAVINA: Hold on. Object to  
25 legal conclusion. Go ahead.

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2 A. I have answered this question  
3 before.

4 Q. And the answer was no?

5 A. I'm not aware.

6 Q. Now, this acknowledgment can't  
7 possibly apply to the two notes that you signed  
8 on behalf of HCMFA because those notes were  
9 signed on May 2nd and May 3rd, 2019; is that  
10 right?

11 MS. DANDENEAU: Objection to form.

12 A. Unless there is a drafting error.

13 Q. Okay. Are you aware of a drafting  
14 error?

15 A. I'm not aware. I didn't -- I wasn't  
16 part of -- I didn't sign this note or this  
17 acknowledgment. I didn't draft it.

18 Q. But you do see it is dated April 15,  
19 2019; right?

20 A. Yes.

21 Q. And this was a document that was  
22 actually included by the advisors in a pleading  
23 they filed with the Court; right?

24 MR. RUKAVINA: Well, I don't know  
25 that so I object to form.







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Q. Do you recall when the audit of Point's financial statements for the period ending December 31st, 2019 was completed?

Q. And when do you recall it being  
deleted?

Q. Do you know why the 2019 audit  
 wasn't completed until January of 2021?

Q. Why was the NexPoint audit report for the period ending 12/31/19 not completed by January 2021?

MR. MORRIS: Can we go to the



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2 balance sheet on page 3? Okay. Stop right  
3 there.

4 Q. Do you see under the liabilities  
5 section, the last item is note payable to  
6 affiliate?

7 A. Yes.

8 Q. And is that the note that we just  
9 looked at?

10 MS. DANDENEAU: Objection to form.

11 Q. Withdrawn.

12 Is that the approximately  
13 \$30 million note that we just looked at that  
14 was dated from 2017?

15 MS. DANDENEAU: Objection to form.

16 A. I believe no.

17 Q. Okay. You're not aware of any other  
18 note that was outstanding from NexPoint to  
19 Highland as of the end of the year 2019, other  
20 than that one \$30 million note; right?

21 A. I don't recall.

22 Q. And as of the end of 2019, the  
23 principal amount that was due on the note was  
24 approximately \$23 million; right?

25 MS. DEITSCH-PEREZ: Object to the



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2 perfectly together.

3 Q. Okay. But you're not aware of any  
4 note that was outstanding at the end of 2019  
5 from NexPoint to Highland other than whatever  
6 principal was still due and owing under the  
7 \$30 million note issued in 2017; correct?

8 A. Well, it -- I don't -- there is  
9 reference in the second paragraph. I don't --  
10 I don't -- I don't recall what that is  
11 referring to, so I don't -- I don't know.

12 Q. Well, if you listen carefully to my  
13 question, right, I'm asking about notes that  
14 were outstanding at the end of 2019, and if we  
15 look at the paragraph you just referred to, it  
16 says that during the year there were new notes  
17 issued totaling \$1.5 million, but by the end of  
18 the year, no principal or interest was  
19 outstanding on the notes.

20 Do you see that?

21 A. Oh, I do, yes.

22 Q. So does that refresh your  
23 recollection that there were no notes  
24 outstanding from NexPoint to Highland other  
25 than the principal remaining under the original

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2 \$30 million 2017 note that we looked at a  
3 moment ago?

4 A. Well, we're at the bottom of the  
5 page. Is there anything on page 16?

6 Q. That is a fair question, sure. That  
7 is it.

8 A. Okay. So it appears that that is  
9 the only note that is detailed in the notes in  
10 the financial statement.

11 Q. And you don't have any memory of any  
12 other note other than the 2017 note, right,  
13 being outstanding as of the end of the year?

14 A. I deal with thousands of  
15 transactions every year. I don't really have a  
16 very specific memory for what exactly was  
17 outstanding.

18 MR. MORRIS: Why don't we take a  
19 break now. We've been going for a little  
20 while. It's 3:26. Let's come back at  
21 3:40.

22 VIDEOGRAPHER: We're going off the  
23 record at 3:26 p.m.

24 (Recess taken 3:26 p.m. to 3:39 p.m.)

25 VIDEOGRAPHER: We are going back on

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2 the record at 3:39 p.m.

3 Q. All right. Mr. Waterhouse, we -- I  
4 don't think we have a lot more here.

5 To the best of your knowledge and  
6 recollection, were all affiliate loans and all  
7 loans made to Mr. Dondero recorded on  
8 Highland's books and records as assets of  
9 Highland?

10 MS. DANDENEAU: Object to the form,  
11 asked and answered.

12 A. To my knowledge, yes.

13 Q. Okay. Can you recall any loan to  
14 any affiliate or Mr. Dondero that was not  
15 recorded on Highland's books and records as an  
16 asset?

17 A. Like during my time as CFO? I don't  
18 recall.

19 Q. How about after the time that you  
20 were CFO? Did you recall that there was a loan  
21 by Highland to an affiliate or to Mr. Dondero  
22 that hadn't been previously recorded on  
23 Highland's books as an asset?

24 MS. DANDENEAU: Objection to form.

25 A. I guess I don't understand the

1 WATERHOUSE - 10-19-21

2 question. I left Highland as of -- I'm not  
3 aware of -- I left Highland in February --  
4 probably the last day of February of 2021.

5 Q. Okay.

6 A. I'm not -- I'm not aware of any --  
7 I'm not aware of anything past that date.

8 Q. Okay. While you were the CFO at  
9 Highland, did Highland prepare in the ordinary  
10 course of business a document that reported  
11 operating results on a monthly basis?

12 A. Yes.

13 Q. And are you generally familiar with  
14 the monthly operating reports?

15 A. Yeah. You are referring to the  
16 reports that we filed to the Court every month?

17 Q. I apologize, I'm not. I'm taking  
18 you back to the pre-petition period. There was  
19 a report that I have seen that I'm going to  
20 show you, but I'm just asking for your  
21 knowledge.

22 MR. MORRIS: Let's put it up on the  
23 screen, Exhibit 39.

24 (Exhibit 39 marked.)

25 Q. Do you see this is a document that

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2 Q. Okay. Do you see that this one  
3 is -- is dated February 2018?

4 A. Yes.

5 Q. Do you have -- do you believe --  
6 have you ever seen a document that was  
7 purporting to report operating results for  
8 Highland?

9 MS. DANDENEAU: Objection to form.

10 A. Yes.

11 Q. Okay. And when you say that you  
12 don't believe it was produced on a monthly  
13 basis, was it produced on any periodic bases to  
14 the best of your recollection?

15 A. I believe it was -- it was prepared  
16 on an annual basis.

17 Q. Okay.

18 MR. MORRIS: Can we look at the next  
19 page.

20 Q. Do you see that there is a statement  
21 here called: Significant items impacting  
22 HCMLP's balance sheet?

23 And it is dated February 2018.

24 A. Yes.

25 Q. Do you recall that there was a

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2 report that Highland prepared that identified  
3 significant items impacting the balance sheet?

4 A. A report that was prepared.

5 Q. Let me ask a better question: Did  
6 Highland prepare reports to the best of your  
7 recollection that identified significant items  
8 that impacted its balance sheet?

9 A. Well, so Highland prepared a -- a  
10 monthly close package. And maybe I'm  
11 getting -- and -- and maybe change names at one  
12 time or maybe I'm just -- again, just  
13 misremembering -- but in that, yes, there is a  
14 page that would detail just changes in -- you  
15 know, just changes month over month on the  
16 balance sheet.

17 Q. Okay. And maybe it is my fault.  
18 Maybe I didn't know the proper name for it.  
19 But let's use the phrase "monthly close  
20 package."

21 Did Highland prepare a monthly close  
22 package in the ordinary course of business  
23 during the time that you served as CFO?

24 MS. DANDENEAU: Objection to form.

25 A. Yes.

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A. Yes, it had a page like that is -- is on the screen that detailed items -- of that nature.

A. That would have been -- again, it  
es over time during my tenure as CFO.  
- it varied over -- over time, but -- but  
cally a -- a corporate accounting manager.

A. It would have been Dave Klos and  
Martin Hendrix.

A. Sometimes.

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3           A.     The practice meaning that they  
4     sometimes lured them to me?

8 MS. DEITSCH-PEREZ: Object to the  
9 form.

13 Q. Okay. So you were -- you reviewed  
14 and approved monthly -- monthly reporting  
15 packages for a certain period of time and then  
16 over time you stopped doing that.

18 MS. DANDENEAU: Objection to form.

25 Q. Okay.

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2 A. And, quite frankly, I don't even  
3 know if these were -- these were sent to me  
4 even in any capacity.

5 Q. What was the purpose of preparing  
6 the monthly reporting package -- withdrawn.

7 What was the purpose of preparing  
8 the monthly close package?

9 MS. DEITSCH-PEREZ: Object to the  
10 form.

11 A. The -- the original purpose was so  
12 that it would just -- it would be a report that  
13 was reviewed monthly with senior management.

14 Q. Who was included in the idea of  
15 senior management?

16 A. You know, I think originally when  
17 this was conceived that would have been like  
18 Jim Dondero and Mark Okada.

19 Q. Were monthly reporting -- withdrawn.

20 Were monthly close packages prepared  
21 to the best of your knowledge until the time  
22 you left Highland?

23 A. To my knowledge -- I don't know,  
24 actually. I mean, to my knowledge, I believe  
25 it was being -- that was still being done. I

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2 don't know because, again, I wasn't reviewing  
3 them. I hadn't reviewed a close package for --  
4 for a long time. But I believe the standard  
5 practice that was still being carried out.

6 Q. Did you ever have any discussions  
7 with the debtor's independent board concerning  
8 any promissory notes that were issued by any of  
9 the affiliates or Mr. Dondero?

10 A. I can't -- I can't -- I can't recall  
11 specifically.

12 Q. Did you speak with the independent  
13 board from time to time?

14 A. Yes, from -- from -- from time to  
15 time I had discussions with the independent  
16 board members, you know, either -- either, you  
17 know, by themselves or wholly, you know, as --  
18 as a -- as a combined work.

19 Q. Okay. Before we talk about  
20 Mr. Seery, do you recall ever having a  
21 conversation with Mr. Nelms or Mr. Dubel  
22 concerning any promissory note that was  
23 rendered by one of the affiliates or  
24 Mr. Dondero to Highland?

25 A. I don't recall any conversations

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specifically.

Q. Do you know if the topic was ever discussed, even if you don't remember it specifically?

MS. DANDENEAU: Objection to form.

A. It -- it -- it may have. I don't know. I don't recall.

Q. Do you recall ever discussing any promissory note issued by any of the affiliates or Mr. Dondero with James Seery?

A. I don't -- I don't recall specifically.

Q. Do you recall generally ever discussing the topic of promissory notes issued by any of the affiliates or Mr. Dondero to Highland with Mr. Seery?

A.      Nothing -- nothing is really jumping  
out at me.

Q. Do you recall if you ever told Mr. Seery that any of the affiliates or Mr. Dondero didn't have an obligation to pay all amounts due and owing under their notes?

A. I don't recall having that conversation.

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2 Q. Did you ever tell Mr. Seery that you  
3 had any reason to believe that the amounts  
4 reflected in the notes issued by the affiliates  
5 and Mr. Dondero were invalid for any reason?

6 A. I don't -- I don't recall.

7 Q. Did you tell Mr. Dondero -- did you  
8 tell Mr. Seery that you thought the promissory  
9 notes issued by the advisors and Mr. Dondero  
10 that were outstanding as of the petition date  
11 were assets of the estate?

12 A. I don't recall having a specific  
13 conversation about those -- you know, those  
14 notes outstanding as -- as of the petition date  
15 being assets on the estate. I mean, we put  
16 together -- you know, they're in the books and  
17 records of the financial statements. I don't  
18 recall having a specific conversation.

19 Q. Did you ever prepare any documents  
20 that were delivered to Mr. Seery that concerned  
21 the promissory notes issued by any of the  
22 affiliates or Mr. Dondero?

23 MS. DANDENEAU: Objection to form.

24 A. Did I produce any that concerned --  
25 you mean did I just -- did I give Mr. Seery





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were filed with the bankruptcy court?

A. I didn't -- I didn't prepare them personally.

Q. Did people prepare them under your direction?

A. Yes. There were members of the team that prepared them, and they worked in -- you know, there were members of DSI that were involved in the process as well.

Q. To the best of your knowledge, did DSI rely on the employees of Highland for the information that they used to prepare the bankruptcy filings?

A. Yes. The books and records were with the Highland personnel.

Q. Okay. And do you see on the screen here, there is a document that we have marked as Exhibit 40 that is -- that is titled Summary of Assets and Liabilities?

A. Uh-huh.

Q. Okay. And do you recall reviewing any summary of assets and liabilities before it was filed with the bankruptcy court?

A. Yes, I recall reviewing this at a



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2 Mr. Dondero, among others; is that right?

3 MS. DANDENEAU: Objection to form.

4 A. Yes. The affiliate notes and the  
5 Dondero notes were in this amount, but they  
6 weren't -- again, like you said, and among  
7 others.

8 Q. Okay. We will look at the  
9 specificity because I'm not playing gaming  
10 here, but do you know if the \$150 million of  
11 notes receivable was included within the  
12 \$410 million of total value of the debtor's  
13 assets?

14 MS. DANDENEAU: Objection to form.

15 A. I -- I -- I believe so.

16 Q. Right. And so is it fair to say  
17 that as of the date this document was prepared,  
18 the notes receivable were more than one-third  
19 of the value of the debtor's assets?

20 MS. DEITSCH-PEREZ: Object to the  
21 form.

22 MS. DANDENEAU: Object to the form.

23 A. Again, if you are just taking the  
24 math, 150 divided by whatever the \$400 million  
25 number is above, then yes, you get there.

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A. Yes, we did do impairment analysis on -- on assets.

A. Not that I recall.

A. As -- as -- if you're preparing financials in accordance with GAAP, generally accepted accounting principles, if you're preparing full GAAP financials, you should be preparing -- you should be undergoing on a periodic basis any fair market value adjustments to assets.

Q. Okay. Were NexPoint and HCMFA and Highland's audited financial statements prepared in accordance with GAAP?

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2 A. The audited financials -- yes,  
3 audited financial statements are prepared in  
4 accordance with GAAP.

5 Q. Do you recall whether any of  
6 Highland or HCMFA or NexPoint ever made a fair  
7 market value adjustment to any of the notes  
8 issued by any of the affiliates or Mr. Dondero  
9 to Highland?

10 A. I do not recall that happening, but  
11 the -- it is because under -- under GAAP,  
12 the -- the treatment of liabilities is  
13 different than assets.

14 Q. Okay. So then let's just focus on  
15 Highland's audited financial statements.

16 The last audited financial  
17 statements were for the period ending December  
18 31st, 2018; correct?

19 A. That is my understanding.

20 Q. And you had -- you had an obligation  
21 to disclose anything to PricewaterhouseCoopers  
22 concerning any subsequent events between the  
23 end of 2018 and June 3rd, 2019; correct?

24 MS. DANDENEAU: Objection to form.

25 MS. DEITSCH-PEREZ: Form.

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2 A. Correct.

3 Q. Okay. To the best of your  
4 knowledge, as Highland's CFO, did Highland ever  
5 make any fair market value adjustments to any  
6 of the promissory notes that were carried on  
7 its balance sheet and that were issued by any  
8 of the affiliates or Mr. Dondero?

9 A. I think I answered that question  
10 earlier. I don't recall doing that for any of  
11 the -- those -- those notes. So it would have  
12 included the audit for the -- for the 2018  
13 period.

14 Q. Okay.

15 MR. MORRIS: Can we go to the next  
16 page.

17 Q. Do you see this is a note a list of  
18 notes receivable? Do you see that?

19 A. Yes, I do.

20 Q. And do you see that this ties into  
21 the page that we were just looking?

22 A. I'm sorry, can we go back to the  
23 prior page? I mean, it was at 150,331,222. It  
24 was on the prior page. Next page. Yes, it  
25 agrees.



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2 Q. Okay. So now let's look at that  
3 schedule. So this was the face amount of all  
4 of the promissory notes that Highland held at  
5 the time this document was filed with the  
6 bankruptcy court; right?

7 A. Yes.

8 Q. There is a footnote there that says,  
9 doubtful or uncollectible accounts are  
10 evaluated at year-end.

11 Do you see that?

12 A. I do.

13 Q. Okay. And is it fair to say that as  
14 of the year-end 2018, the year before this,  
15 that to the extent any of these notes were  
16 outstanding at that time, they weren't deemed  
17 to be doubtful or uncollectible?

18 A. Yeah. For the 2018 audit, there  
19 weren't any -- there weren't any adjustments to  
20 fair value.

21 Q. Okay. And during the bankruptcy, do  
22 you recall that Highland subsequently reserved  
23 for the Hunter Mountain Investment Trust note?

24 A. Yes.

25 Q. Why did Highland -- were you

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2 involved in the decision to reserve the Hunter  
3 Mountain Investment Trust note?

4 A. I was not.

5 Q. Do you know why Highland decided to  
6 reserve for the Hunter Mountain Investment  
7 Trust note?

8 A. I don't know yet decision was made.  
9 I believe it was made by someone at DSI.

10 Q. Okay. I'm just asking if you know  
11 why.

12 Did you ever ask anyone why they  
13 reserved for that particular note?

14 A. I don't recall.

15 Q. Do you know whether the debtor  
16 reserved for any other note on this list during  
17 the bankruptcy?

18 A. Again, I don't recall. I wasn't  
19 part of any process of -- again, like any fair  
20 value adjustments or anything to that degree.  
21 Like I said, a lot of that was done by DSI and  
22 it was kind of out of our court.

23 Q. Okay. Do you know if any note  
24 receivable on this list was ever deemed by the  
25 debtor to be doubtful or uncollectible?



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2 MS. DEITSCH-PEREZ: This is like the  
3 fifth time you've asked it. Object to the  
4 form.

5 MR. MORRIS: I'm moving to strike,  
6 if you haven't noticed, because he's not  
7 answering the question.

8 MS. DEITSCH-PEREZ: He was answering  
9 the question, you just didn't like it, like  
10 the answer.

11 MR. MORRIS: Good Lord.

12 Q. Go ahead, Mr. Waterhouse.

13 A. Again, I don't -- we brought up a  
14 myriad of issues at the start of the bankruptcy  
15 case. I don't recall if this was one of them,  
16 but, again, there are a lot of things we  
17 couldn't change. Even, you know, I was told  
18 status quo, blah, blah, blah, right, there is a  
19 stay, you can't -- you know, I don't recall  
20 specifically, but that doesn't mean it didn't  
21 happen.

22 MR. MORRIS: I move to strike.

23 Q. During the time that Highland was in  
24 bankruptcy and you served as CFO, did you have  
25 any reason to believe that any of the notes



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2 once, twice, three, four times with -- you  
3 know, I mean, we -- I don't -- I don't remember  
4 the sum culmination of all these discussions.  
5 They all kind of blend together.

6 MR. MORRIS: Okay. I move to strike  
7 and I will try one more time.

8 Q. Did you ever tell anybody at DSI  
9 that you believed any of the notes receivable  
10 on this list were doubtful or uncollectible?

11 MS. DANDENEAU: Object to form.

12 A. Potentially.

13 Q. Potentially you told them or  
14 potentially they were doubtful or  
15 uncollectible?

16 A. Potentially I told them that we  
17 needed to look at the value of these -- of  
18 these assets.

19 Q. Okay. Did you -- okay. It is  
20 potential that you told them and it is  
21 potentially that you didn't; right?

22 MS. DANDENEAU: Objection to form.

23 A. I've gone through that. I don't  
24 recall specifically.

25 Q. So you should just -- I don't want







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2 suggests that he has not testified  
3 truthfully.

4 MR. MORRIS: I will ask my question  
5 again. And if at any time you want to  
6 direct him not to answer, that is your  
7 prerogative.

8 Q. Mr. Waterhouse, do you have any  
9 recollection at all of ever telling anybody  
10 from DSI that any of these notes were doubtful  
11 or uncollectible?

12 MS. DANDENEAU: Object to form.

13 A. I don't remember specifically.

14 Q. Do you remember generally that  
15 specific topic?

16 A. We generally talked about assets,  
17 values. If -- we had discussions of that and  
18 collectability in nature. I mean, of Highland,  
19 the funds, the CLOs, the entire complex. We  
20 had discussions like that, which is, you know,  
21 as you look at a billion dollar consolidated  
22 balance sheet.

23 So I generally remember -- this is  
24 billions of dollars, including these assets --  
25 having discussions of this -- of this type.

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Q. Did you point out that any of these --

Q. Okay. At any time that you served Highland's CFO, did you ever point out to him that any of these loans were doubtful or collectible?

MS. DANDENEAU: Objection.

Q. Do you recall that the debtor filed the docket monthly operating reports?

Q. You prepared those personally, is that right?

I didn't personally prepare them,  
did with DSI.

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Q. And you signed them as the preparer of the document; correct?

Q. Okay. You wouldn't have signed the document if you didn't believe it to be accurate; correct?

Q. Okay. And do you have any reason to believe right now that any monthly operating report that has your signature on it was accurate in any way?

A. My understanding of the monthly reporting requirements is we were filing them in accordance with the standards set by the Court. It wasn't -- you know, again, I don't -- you know, it wasn't GAAP. It wasn't these other standards, so I testified I didn't have experience in this. The CRO was running the

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2 Highland; correct?

3 A. Yes.

4 Q. And you're the preparer -- you're  
5 identified as the preparer of the report;  
6 correct?

7 A. That is correct.

8 Q. Do you recall participating in the  
9 preparation of monthly operating reports?

10 A. As I testified earlier, it was put  
11 together, you know, with the team. The team  
12 worked with DSI to put these monthly operating  
13 reports together. We had no experience at this  
14 time of the monthly operating reports or things  
15 of this nature.

16 MR. MORRIS: Can you turn to the  
17 next page, please.

18 Q. Do you see a line item under assets  
19 due from affiliates?

20 A. Yes, I do.

21 Q. Okay. And to the best of your  
22 knowledge and understanding, as the person who  
23 is identified as the preparer of this report,  
24 does that line item include the affiliate loans  
25 that we've been talking about?



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A. Again, I would have to see, just like we did with the financial statements of Highland and NexPoint, I would have to see a detailed build, but, you know, if you look at the other line items, you know, the only other place it could be would be in -- in other assets.

Q. Okay. And as a matter of arithmetic, is it fair to say that is the value of the assets due from affiliates was more than 25 percent of the value of Highland's total assets as of 12/31/2019?

MS. DANDENEAU: Objection to form.

A. I'm really not doing the mental math right now, so I've been going at this depo for hours, so I'm really not -- you know --

Q. All right. No problem.

A. -- these are millions of dollars.

Q. Let's look at the Footnote 1, please. Do you see there is a reference to the Hunter Mountain note?

A. Yes, I see that in Footnote 1.

Q. Okay. And that's the reserve that was taken against that note?



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2 circumstances change. Again, you have to do an  
3 analysis.

4 Q. Okay. And you do recall that in  
5 Highland's 2018 financial statement, all of the  
6 notes issued by affiliates and Mr. Dondero that  
7 were due at year-end had a fair value equal to  
8 the carrying value; correct? We looked at  
9 that?

10 A. Yes. That was in the -- in the  
11 disclosure for the -- for the affiliate notes,  
12 yes.

13 Q. And -- and you were obligated to  
14 share with PwC any subsequent events between  
15 the end of 2018 and the date that you signed  
16 your management representation letter on June  
17 3rd, 2019; correct?

18 MS. DEITSCH-PEREZ: Object to the  
19 form.

20 A. Yes. I -- I -- I signed the  
21 management, you know, my signature is in the  
22 management representation letter -- I hope I'm  
23 answering your question -- that is dated in  
24 June with the representations made in that  
25 management representation letter.

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Q. Okay. And there was nothing that caused PricewaterhouseCoopers to include in subsequent events any adjustment to the conclusion that the fair value of the affiliate notes and the notes issued by Mr. Dondero equaled the carrying value; correct?

MS. DANDENEAU: Objection to the

A. That is correct. That is what was in the -- in the -- in the footnotes.

Q. Okay. So are you aware of anything that occurred between June 3rd, 2019 and December 31st, 2019 that would have caused the fair value of the notes to differ from the carrying value?

A. Yeah. Highland filed for bankruptcy, things changed -- I mean, there was a bankruptcy filed in October of -- of -- of 2019, right, the petition date that we've described earlier.

I mean, I had a -- I guess looking back naively, I thought we were going to get an audit from PwC for year-ended 2019, and when we had discussions with PwC, they were like, are

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2 carrying value during the seven-month period  
3 between June 3rd and the end of the year, 2019?

4 MS. DANDENEAU: Objection to form.

5 A. No. I mean, I'm putting myself back  
6 at that time, right. Hindsight is 2020, but we  
7 didn't do an analysis, but we would have done a  
8 fulsome analysis and looked at all of the facts  
9 and circumstances at the time, but asset values  
10 change. You know, there could have been a  
11 market crash in hindsight in 2020, which --  
12 which affected entities' abilities.

13 There could have been all of these  
14 things, right, that -- that happen. It is --  
15 it is easy to look back in hindsight, but when  
16 you are looking at this in -- in realtime, the  
17 analysis is different, and again, we didn't do  
18 an analysis.

19 Q. Okay. You didn't do an analysis.

20 Do I have that right?

21 A. I don't -- I don't recall doing one  
22 or maybe -- you know, I don't recall doing one.

23 MR. MORRIS: Okay. I'm going to

24 take a break. I may be done, so the time  
25 now is -- is 4:30 your time. Let's just







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2 A. Yes.

3 Q. You and I have never met or talked  
4 before today, have we?

5 A. No, I have -- I have heard your  
6 voice on calls before.

7 Q. Okay.

8 MR. RUKAVINA: Madam Court Reporter,  
9 I will use a few exhibits today. My  
10 associate, Mr. Nguyen, will find some way  
11 to get them to you. I don't know how to do  
12 that, but it looks like you guys do.

13 I am going to use numbers as well.  
14 But to differentiate them from Mr. Morris  
15 we're going to mark mine with the prefix A  
16 for advisors.

17 Do you understand?

18 COURT REPORTER: Yes.

19 MR. RUKAVINA: Okay. Perfect.

20 Q. Okay. So, Mr. Waterhouse, let's  
21 start with those two HCMFA notes that you were  
22 asked about, one for 5 million and one for  
23 2.4 million.

24 Do you recall those notes?

25 A. Yes.

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2 Q. Were you ever the CFO of HCMFA?

3 A. I don't recall.

4 Q. So to the best of your recollection,  
5 you were still an officer of HCMFA in 2019,  
6 just that your title was treasurer?

7 MR. MORRIS: Object to the form of  
8 the question. There is no leading here.  
9 He works for your client.

10 MS. DANDENEAU: That is not -- that  
11 is not true.

12 MR. MORRIS: He's the treasurer --  
13 he is the treasurer of your client. I  
14 don't -- I'm going to object every time you  
15 try to lead, so...

16 MR. RUKAVINA: Totally fine to  
17 object.

18 MR. MORRIS: Okay.

19 Q. Please answer my question,  
20 Mr. Waterhouse.

21 A. I'm sorry, could you repeat? There  
22 was...

23 Q. Yes. You were -- you testified  
24 earlier that in 2019 you were an officer of  
25 HCMFA; correct?

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Q. I'm just trying to confirm that  
ing here today, to the best of your  
ollection, at that time you were -- you  
e was treasurer. It was not chief  
ncial officer.

Q. Okay. And in May of 2019, however, I think you testified you were the chief financial officer of the debtor; correct?

A. Yes, I was -- yes.

MR. MORRIS: Objection to the form of the question.

Q. Yes. So in your capacity as the

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2 Q. Okay. Now, I'm going to ask you a  
3 similar question but for a different entity.

4 In May of 2019, as the treasurer of  
5 HCMFA, did you believe that you unilaterally  
6 had the ability to cause HCMFA to become the  
7 borrower of a \$5 million loan and a  
8 \$2.4 million loan?

9 MR. MORRIS: Objection to the form  
10 of the question.

11 A. No.

12 Q. What would -- what would the  
13 approval have taken place -- strike that.

14 What would the approval process have  
15 been like in May of 2019 at HCMFA for HCMFA to  
16 take out a \$7.4 million loan?

17 MR. MORRIS: Objection to the form  
18 of the question.

19 A. The process would have been similar  
20 to what we just discussed on -- for Highland to  
21 make a loan to others. So, again, you know,  
22 we -- we would have -- either myself or someone  
23 on the team would have discussed this with  
24 the -- the president and owner of -- of HCMFA.

25 Q. And who was that individual?

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2 A. That was James -- Jim Dondero.

3 Q. So do I understand that in May of  
4 2019, on behalf of both the lender, Highland,  
5 and the borrower, HCMFA, Mr. Dondero would have  
6 had to approve \$7.4 million in loans?

7 MR. MORRIS: Objection to the form  
8 of the question.

9 A. Yes.

10 Q. You mentioned when Mr. Morris was  
11 asking you the NAV error, N-A-V error, with  
12 respect to TerreStar, without writing us a  
13 novel, unless you feel like you have to, can  
14 you summarize what that NAV error was? What  
15 happened?

16 A. There was a -- in the Highland  
17 Global Allocation Fund, it owned at the time an  
18 equity interest in a company called TerreStar.  
19 And TerreStar is -- at the time was a private  
20 company, and it may still be today. Again, I'm  
21 putting myself back then as a private company.

22 We had -- sorry, I don't mean we --  
23 the fund and the advisor used Houlihan Lokey  
24 to -- to value that investment. And during  
25 that time there was some trades that were

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executed at market levels that were much lower than the Houlihan Lokey model.

And based on information and discussions with the portfolio managers and, you know, principals that were very familiar with TerreStar, it was determined that those trades were non-orderly and they were not considered in the valuation as consulted with Houlihan Lokey and PricewaterhouseCoopers at the time.

Subsequent to a -- I can't remember the exact circumstances of why the SEC got involved. I think it was due to this -- this investment became a material position in the fund. It triggered an SEC, kind of, inquiry. And as part of that inquiry, they questioned the valuation methodology. "They" meaning the SEC.

And at the culmination of that process -- this is all summarized -- the value that was -- that ultimately had to be used in the fund's NAV was different than -- materially different than what the original valuation at Houlihan Lokey provided.

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And given that there was this fund was, as we discussed -- I don't know if we discussed it, but it was an open-ended fund that was going -- that was converting to a close-end fund.

Due to the fact that it was an open-ended fund, you had to recalculate NAV and see what the impact was on people -- on investors coming in and out of the fund and if there is a detrimental impact and to calculate what that -- what that impact was and if there was any amounts owed to the fund pursuant to the error.

Q. Were you personally involved internally at either Highland or HCMFA with these investigations and discussions with the SEC?

A. I was.

Q. Which other key people or senior people at Highland were involved, to your recollection?

A. Myself, Thomas Surgent, David Klos, Lauren Thedford, Jason Post.

Q. Mr. Dondero, was he --



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Q. Well, do you recall whether HCMFA admitted certain fault and liability for this error?



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I think what you are saying is based on this error, shareholders were harmed by this approximately \$7.8 million -- by approximately \$7.8 million. Is that what you are asking?

A. Yes, that was -- again, I don't have exact numbers. If I take -- it was -- it in that ballpark, and there is a detailulation and write-up that could, that -- exists someplace.

MR. MORRIS: Objection to the form of the question.

Q. Was that contract generally called a  
ed services agreement?

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2 it depends on who you talk to, but yes,  
3 generally, there were -- there are multiple  
4 agreements.

5 Q. Pursuant to one or more of those  
6 agreements, was the debtor providing certain  
7 services to HCMFA?

8 MR. MORRIS: Objection to the form  
9 of the question.

10 A. Yes.

11 Q. And can you at a very high level  
12 summarize in 2018 and 2019 what those services  
13 were?

14 A. Yes, there was a -- yes.

15 Q. Okay. Please -- please go -- go  
16 through a short summary.

17 A. There was a -- a cost reimbursement  
18 agreement between Highland Capital Management  
19 Fund Advisors and Highland Capital Management,  
20 L.P. That agreement was for what we referred  
21 to as front office services, so investment  
22 management, things of that nature.

23 There was I think what most people  
24 refer to as the shared services agreement that  
25 was -- that agreement was between Highland

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2 Capital Management Fund Advisors and Highland  
3 Capital Management for back office services.

4 Q. And can you summarize what you mean  
5 by back office services?

6 A. Those services were for accounting,  
7 finance, tax, valuation, HR, IT, you know,  
8 legal compliance, things of -- things of those  
9 nature -- or things of that nature, excuse me.

10 Q. So in the spring of 2019, do you  
11 recall whether HCMFA took the position that it  
12 was actually Highland that caused the NAV error  
13 to occur pursuant to the valuation services  
14 that Highland was providing?

15 MR. MORRIS: Objection to the form  
16 of the question.

17 A. I do not recall.

18 Q. Did you ever have any discussions  
19 with anyone, Jim Dondero or anyone in the first  
20 half of 2019 as to whether Highland, the  
21 debtor, that is, had any liability to HCMFA  
22 related to the NAV error?

23 MR. MORRIS: Objection to the form  
24 of the question.

25 A. I do not recall.

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2 Q. And then you mentioned that the fund  
3 was being closed and some compensation related  
4 to that. Can you -- can you elaborate? What  
5 were you referring to?

6 A. Right. So the advisor, pursuant to  
7 board approval, put a proposal in front of the  
8 shareholders of the Highland Global Allocation  
9 Fund to convert it from an open-ended fund to a  
10 closed-end fund.

11 So an open-ended fund, when  
12 shareholders subscribe to the fund or redeem  
13 into the fund, they do it at NAV.

14 When it is -- when you have a  
15 closed-end fund, closed-end funds are -- are  
16 publicly-traded, like on the New York Stock  
17 Exchange, exchanges like that, and -- and  
18 shareholders or investors, they're not --  
19 they're -- they're not subscribing and  
20 redeeming with the fund. They are like shares  
21 of Apple.

22 Those shares of the Highland Global  
23 Allocation Fund trade on an exchange, and that  
24 is how you, you know, that is how, you know,  
25 you become an equity owner in the fund or you

sell your shares and you are no longer an equity owner.

Q. Okay. You mentioned when Mr. Morris was asking you, going back to those two promissory notes, you will recall the 5 million and 2.4 million, you mentioned something to the effect that Mr. Dondero told -- told you to pay some moneys out of Highland. Do you remember that discussion with Mr. Morris?

Q. So, to the best of your

A. I recall, as I testified earlier, I had a conversation with Mr. Dondero

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Q. Do you recall if that was an in-person meeting or some other mode for the meeting?

Q. Do you recall if anyone else was present, or was it just you and Mr. Dondero?

Q. And the moneys that he told you to find from -- or get from Highland, was that in the amount of \$5 million and \$2.4 million?

A. I believe so, but I would have to go back and look and see when those moneys were actually paid into the -- into the fund and, you know, when those transfers were done. If they were all done around that same time, then



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A. Sorry, I want to make sure -- did I  
the amounts that were transferred that I --  
-- that I assumed that that was a loan?

So you have established already that quite a number of promissory notes worth -- I'm sorry, quite a number of notes with affiliated companies and owing Highland money; right?

Q. And you have established that there many transactions and transfers going back forth over the years; right?

A. In -- yes, in my capacity as CFO and employment, yes, that is -- yes.

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2 of the question.

3 A. I don't know. As I testified  
4 earlier, I had conversations with Mr. Dondero  
5 about -- about the -- the -- the moneys that  
6 were needed for the NAV error. And I recall  
7 him saying go get it from Highland -- or get it  
8 from Highland.

9 Q. Well, why did you sign those  
10 promissory notes and why didn't you have him  
11 sign them?

12 MR. MORRIS: Objection to the form  
13 of the question.

14 A. I don't know. I don't know.

15 Q. You mentioned earlier that you  
16 typically don't sign promissory notes. Am I  
17 remembering your testimony correctly?

18 I mean, promissory notes on behalf  
19 of the entities. Not yourself, obviously.

20 A. Yes, that is what I said earlier.

21 Q. Do you recall any other promissory  
22 notes in the million-plus range that you had  
23 ever signed before on behalf of any entity?

24 A. There is -- there has been a lot of  
25 transactions over the years. I don't -- I

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2 don't -- I don't recall generally. I don't --  
3 I don't recall.

4 Q. So -- but to the best of your  
5 recollection, it was on your initiative,  
6 following your discussion with Mr. Dondero,  
7 that you had someone draft those two promissory  
8 notes; is that correct?

9 MR. MORRIS: Objection to the form  
10 of the question.

11 A. Yes, we would have -- the team, as I  
12 stated earlier, we don't draft promissory  
13 notes. "The team" meaning the accounting and  
14 finance team.

15 So the team would have worked with  
16 the legal group at Highland to draft any notes.

17 Q. Do you believe or do you have any  
18 recollection as to whether you would have done  
19 that pursuant to an email or telephone call or  
20 in-person meeting?

21 MR. MORRIS: Objection to the form  
22 of the question.

23 A. Are you asking if I would have -- if  
24 those notes would have been drafted pursuant to  
25 an email or phone call?





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2 managers of the group. That would have been  
3 Dave Klos or Kristin Hendrix.

4 Dave was the -- one of his duties  
5 was managing the valuation team, and so he was  
6 intimately involved with this process. So, you  
7 know...

8 Q. Okay.

9 A. I don't recall specifically but, I  
10 mean, my general -- you know, I -- I -- I  
11 likely would have talked to Dave first about it  
12 versus someone like Kristin who hadn't been  
13 intimately involved.

14 Q. And -- and do you have a view as to  
15 whether it is most likely that you would have  
16 done that by email or in-person or how would  
17 you believe you would have communicated that to  
18 Mr. Klos?

19 MR. MORRIS: Objection to the form  
20 of the question.

21 A. I likely would have done that in  
22 person. Again, if things of this nature  
23 that -- again, you have to put ourselves back  
24 to, we have been working on this very stressful  
25 project for many, many months. And once the

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go-ahead was to -- you know, we see the light at the end of the tunnel with wrapping this up and making shareholders whole -- sorry to say "we" -- you know, the -- so the folks that are involved in it.

I like to talk to people face-to-face and -- and -- and go to -- and go to their desk, because that shows if I'm going to their desk that -- that is something that I want done, you know.

Q. And do you remember, Mr. Waterhouse, getting those two promissory notes in paper format or by email before they were executed?

MR. MORRIS: Objection to the form of the question.

A. I don't recall.

Q. For whatever was the ordinary course back then in May 2019, would you expect to have received them only on paper or would you have expected to have received them in Word document or PDF document by email?

MR. MORRIS: Objection to the form of the question.

A. I -- I didn't sign -- I signed very

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2 few documents via email. I can't say that it  
3 never happened, but people either stopped by my  
4 office and physically walked in documents for  
5 signature that we discussed face-to-face.

6 Or documents were -- if -- if --  
7 if -- if -- let's say I wasn't there or I  
8 wasn't available, documents were dropped off.  
9 I had -- I had some in- and outboxes in front  
10 of my -- my office there at the Crescent.

11 Documents would be dropped off for  
12 signature. There would be a cover sheet that  
13 would be -- have been applied to those  
14 documents detailing, you know, who dropped it  
15 off, the purpose, why, what time.

16 And then, you know, as I stated, I  
17 don't draft documents and I always go to the  
18 legal group and the compliance group to make  
19 sure that they're in the loop. And there is  
20 a -- a box or section that says, Has legal  
21 reviewed or approved, or something to that  
22 nature.

23 Again, I don't -- I don't have  
24 access to that cover sheet anymore, but it  
25 was -- it was something to that effect.

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Q. Let me -- let me pause --

MS. DANDENEAU: Let him finish.

MR. MORRIS: Thank you. Go ahead.

A. I take -- go to the legal group because that -- that was my -- you know, I didn't -- I didn't review anything that -- that they weren't -- you know, or there wasn't some representation made to me that they had reviewed, approved in some capacity.

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Q. So if we summarize, you don't specifically remember signing these two notes, but most likely it would have been that they would have presented -- been presented to you physically on paper?

A. They would -- they would have been  
presented physically on paper most likely or  
one would have left it. But, I mean,  
no, I don't -- I don't recall.

When you signed -- when you signed  
instruments, when you personally signed  
instruments, did you typically use a ink pen or  
do you use a stamp?

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did have a -- an electronic signature, and that was used from time to time. It wasn't as common practice back in 2019. It definitely was more common practice when we had to work from home and remotely for COVID because it that made it almost impossible to, right, provide wet signatures since we're all working from home remotely.

Q. Well, going just for these two promissory notes, Mr. Waterhouse, in light of your inability to remember any details, are you sure you actually signed either or both of those notes?

MS. DANDENEAU: Objection to form.

A. I don't recall specifically signing -- actually physically signing these notes. As I said before, I don't recall doing that. This -- this looks like my signature, but yet these two signatures are identical.

Q. So you don't recall physically signing them, and I take it you don't recall electronically signing them either?

A. I don't recall. You know, Highland has all my emails. If that occurred, you know,



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Q. That is why I'm asking you these questions in great detail because I don't have those emails. I'm trying to -- I'm hoping that you will give me some names or some details so I can go look for more emails, but again, you don't remember any -- any individual, other than Mr. Dondero that we've discussed, you don't remember any individual with whom you discussed these promissory notes prior to their execution?

A. I don't recall discussing it with anybody else.

A. I mean, prior --

A. You know, there was no one else --  
there was no one else in that meeting that I  
talked with Mr. Dondero.

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A. And -- and from what I recall, and the reason why I was by myself is -- is, you know, I don't -- I don't want to speculate, I'm sorry.

A. Yeah. I mean, again, I don't have financial statements in front of me, but I think, if I recall, we'd have to go through the testimony with Mr. Morris, I believe that was the case.

MS. DEITSCH-PEREZ: I think you  
might -- maybe have the court reporter read  
that back. You might have misspoke.

MR. RUKAVINA: And I did misspeak.

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2 MR. MORRIS: Objection to the form  
3 of the question.

4 A. Sorry, I just want to make sure --  
5 are you asking me, did you say, was it prudent  
6 for Highland to loan \$7.4 million to HCMFA a  
7 few weeks after this document was executed?

8 Q. Yes, and at a time when HCMFA's  
9 liabilities exceeded its assets.

10 MR. MORRIS: Objection to the form  
11 of the question.

12 A. I don't -- it is odd. I don't know.

13 MR. RUKAVINA: You can take this  
14 exhibit down, Mr. Nguyen.

15 Q. Do you recall asking anyone,  
16 Mr. Dondero or -- or anyone outside as to  
17 whether Highland ought to be lending  
18 \$7.4 million to HCMF regarding HCMF's  
19 creditworthiness?

20 MR. MORRIS: Objection to the form  
21 of the question.

22 A. I don't recall.

23 Q. Did you receive personally any of  
24 that \$7.4 million?

25 A. No.





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A. I would have to go back and look and check in, you know, the -- the financial records and the bank statements.

Q. Mr. Waterhouse, I'm not trying to be a smart-ass, but if the law says that because of the way that you signed this promissory note, if that is what the law says, that that made you personally -- personally liable, then you would agree with me that that was never your intent?

A. That was never -- I wouldn't sign a  
and not get consideration in return.

MR. MORRIS: Objection to the form  
of the question.











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So this is an example where -- where

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2 you might have made a mistake by referring to a  
3 singular instead of a plural; right?

4 A. Yes.

5 Q. Okay. And you -- you wrote -- a  
6 couple of sentences later, you wrote: There  
7 was an agreement between HCMLP and HCMFA the  
8 earliest they could demand is May 2021.

9 You wrote that; right?

10 A. Yes.

11 Q. But I think you -- you agreed with  
12 Mr. Morris that that can't possibly apply to  
13 the May 2019 notes, can it?

14 MR. MORRIS: Objection to the form  
15 of the question. That is not what he  
16 testified to.

17 Q. Let me ask -- let me ask a different  
18 question.

19 Sitting here today -- or if you can  
20 answer me from your memory on October 6,  
21 2020 -- did the April acknowledgment that  
22 extended the maturity date apply to the  
23 May 2019 notes also?

24 A. I don't recall specifically.

25 Q. Well, you recall that the notes that





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2 putting language in those May notes. I don't  
3 remember what language you are referring to.

4 Q. Well, let's read this again.

5 There was an agreement between HCMLP  
6 and HCMFA the earliest they could demand is May  
7 2021.

8 Do you recall that agreement?

9 A. Yes, that was the agreement we  
10 looked at earlier; correct?

11 Q. Okay. Yes.

12 Do you -- do you understand now that  
13 that agreement that we looked at earlier also  
14 applied to the May 2019 notes that you signed?

15 A. I don't -- I don't know.

16 Q. But as of October 6, 2020, you're  
17 writing that there is one demand note and  
18 you're categorizing that demand note as not  
19 being demandable on May 2021; correct?

20 A. Yes.

21 Q. And you know now that you made at  
22 least one mistake in this email; correct?

23 MR. MORRIS: Objection to the form  
24 of the question.

25 A. Yes.

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2 A. Yes.

3 Q. If Mr. Dondero testifies that he  
4 never told you to make these loans, would you  
5 disagree with his testimony?

6 MR. MORRIS: Objection to the form  
7 of the question.

8 A. Like I testified earlier with my  
9 conversation with Mr. Dondero, all I recall is  
10 he said, get the money from Highland.

11 Q. And if Mr. Dondero testifies that  
12 he, in consultation with other senior personnel  
13 at Highland, decided that Highland needed to  
14 pay HCMFA \$7.4 million as compensation for the  
15 NAV error and not a loan, would you have any  
16 reason to disagree with Mr. Dondero?

17 MR. MORRIS: Objection to the form  
18 of the question.

19 A. If that was -- if that was his  
20 intent, yes, it would -- I would --

21 Q. Do you have any reason to disagree  
22 with him?

23 MR. MORRIS: Objection to the form  
24 of the question.

25 A. If that was his intent, I don't

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Q. And just to confirm, you don't

A. No.

A. I don't recall -- I testified all I

Q. Do you have any memory of whether

MR. MORRIS: Objection to the form

of the question.

A. I don't recall.

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2 Q. Obviously with COVID, it changed,  
3 but -- but before COVID, did you used to meet  
4 with Mr. Seery from time to time in-person?

5 A. Yeah, I mean, so before COVID -- so  
6 we're talking kind of late March, early April,  
7 right, there was about -- I don't remember the  
8 specific date when the board for Highland was  
9 appointed. I believe it was around February of  
10 2020, so maybe there was a month-and-a-half,  
11 two-month window where we were meeting  
12 in-person or, you know, like we were actually  
13 in the office, excuse me, we were in the  
14 office.

15 And, you know, when they were first  
16 appointed, the board members and Mr. Seery  
17 were -- were definitely down here more  
18 in-person.

19 Q. Did you ever see Mr. Seery taking  
20 written notes of -- of his meetings with you or  
21 others?

22 A. I don't recall.

23 Q. Do you recall on any Zoom or video  
24 conference with Mr. Seery, seeing him take  
25 notes, written notes?



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So there were -- there were some times that I did remember seeing Mr. Seery on -- on some of the Zoom calls.

A. I don't -- sorry, I'm thinking. I'm  
 thinking -- I'm going back. I'm trying to  
 mess this.

Do you have any knowledge about that?

Q. Okay. Switching gears yet again, this will be last theme. Do you need a room break, or are you good to go for another half an hour?

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2 A. Yes.

3 Q. So let's break that up. You were a  
4 treasurer of NexPoint as well in December of  
5 2020?

6 MR. MORRIS: Objection to the form  
7 of the question.

8 A. Yes.

9 Q. Okay. And in December of 2020, did  
10 NexPoint have its own bank accounts?

11 A. Yes.

12 Q. And did it use those bank accounts  
13 to pay various of its obligations?

14 A. Yes.

15 Q. Did employees of the debtor have the  
16 ability to cause transfers to be made from  
17 those bank accounts on behalf of NexPoint?

18 A. Yes.

19 Q. And is that one of services that the  
20 debtor provided NexPoint, basically ensuring  
21 that accounts payable and other obligations  
22 would be paid?

23 A. Yes.

24 MR. MORRIS: Objection to the form  
25 of the question.





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A. Yes.





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2 A. Yes.

3 Q. And that is probably the loan that  
4 was approved on the prior page?

5 A. Yes, most likely.

6 Q. So is it also true, sir, that in  
7 addition to accounts payable debtor employees  
8 would be assisting NexPoint with respect to  
9 paying back its debt?

10 MR. MORRIS: Objection to the form  
11 of the question.

12 A. I mean, yes, for loans of this  
13 nature, yes.

14 Q. Well, what about long term loans?  
15 Was it reasonable for NexPoint to expect debtor  
16 employees to ensure that NexPoint timely paid  
17 its obligations under long-term notes?

18 MR. MORRIS: Objection to the form  
19 of the question.

20 MS. DANDENEAU: Objection to form.

21 A. I mean, that is one of the things  
22 that the Highland personnel did provide to the  
23 advisors. Yes, we would -- we would -- over  
24 the years, yes, we -- we -- we -- we did do  
25 that generally. Again, I don't remember

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keep saying "we" -- I keep wearing my -- again,  
my -- my treasurer hat.

inform Mr. Dondero of the obligations of the advisors in terms of cash and obligations that are -- are upcoming and that -- and that are -- are scheduled to be paid.

MS. DANDENEAU: Objection to form.

you misspoke. You might want to just repeat the question.

Prior to 2020, those services that described, would that -- on behalf of, would that have included NexPoint's in the \$30 million note?

Q. So someone at the debtor in treasury

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2 it.

3 Q. Were you aware that Highland  
4 accelerated that \$30 million promissory note?

5 A. I am aware.

6 Q. Were you aware of that acceleration  
7 at the time that it occurred?

8 A. I don't remember specifically.

9 Q. Do you recall whether anyone asked  
10 you -- prior to the acceleration, anyone asked  
11 you at Highland, what Highland should do with  
12 respect to the missed payment?

13 A. Did anyone ask me what Highland  
14 should do about the missed payment?

15 Q. Yes, before acceleration.

16 MR. MORRIS: Objection to the form  
17 of the question.

18 A. I mean, what -- what I recall is  
19 there was the -- sorry, are you asking me --

20 MS. DANDENEAU: Why don't you just  
21 repeat the question, Mr. Rukavina.

22 Q. Let me try again, Mr. Waterhouse,  
23 let me try again.

24 I am saying you're the CFO of  
25 someone, in this case, Highland, and the



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2 borrower failed to make the required payment.

3 Are you with me so far?

4 A. I am.

5 Q. Did anyone then ask you, what should  
6 we do with respect to our rights against the  
7 borrower that missed the payment?

8 A. Not that I recall.

9 Q. Did you play a role in the decision  
10 to accelerate that \$30 million promissory note?

11 A. I did not.

12 Q. Do you recall whether Mr. Seery ever  
13 asked you before the acceleration as to whether  
14 he should accelerate the note?

15 A. I don't recall.

16 Q. And you don't recall when you  
17 learned of the acceleration itself?

18 MR. MORRIS: Objection to the form  
19 of that question.

20 A. It was -- it was sometime in  
21 early -- in early 2021. I don't remember  
22 specifically.

23 Q. But do you recall whether it was  
24 after the acceleration had already been  
25 transmitted?





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1 WATERHOUSE - 10-19-21

2 going back on mute.

3 MS. DANDENEAU: Get the right  
4 nomenclature.

5 Q. Mr. Waterhouse, on January 12th,  
6 2021, when you had those talks with Mr. Dondero  
7 about the \$1.4 million payment, did you have a  
8 communication or a conversation with Mr. Seery  
9 about that payment after January 12th, 2021?

10 A. I don't recall.

11 Q. Well, in response to Mr. Dondero  
12 reaching out to you, do you recall on that day,  
13 January 12th, talking to Mr. Seery or anyone at  
14 Highland other than the email chain we just saw  
15 about Mr. Dondero's call with you?

16 A. Did I talk to -- I spoke with  
17 Kristin -- I don't know if I spoke to her. I  
18 likely spoke to Kristin Hendrix because we had  
19 to get the wire on NexPoint's behalf to make  
20 the payment to Highland.

21 Q. So it is true, then, that -- that  
22 employees of the debtor did actually cause that  
23 payment to be made when it was made after  
24 January 12th?

25 A. Yes, I mean, we -- we -- as I

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1 WATERHOUSE - 10-19-21

2 time.

3 MR. RUKAVINA: Pass the witness.

4 MR. MORRIS: I just have a few  
5 questions, if I may.

6 MS. DEITSCH-PEREZ: Don't you go at  
7 the end?

8 MR. MORRIS: Oh, I apologize. He is  
9 your witness. I'm surprised you want to  
10 ask him questions, but go right ahead.

11 MS. DEITSCH-PEREZ: Just have a  
12 couple of things.

13 MR. RUKAVINA: And I will just  
14 object to that, that he's our witness.  
15 That's not --

16 MR. MORRIS: I'm not talking to you.  
17 I'm not talking to you.

18 MS. DANDENEAU: Also, Mr. Morris, it  
19 is -- it is --

20 MS. DEITSCH-PEREZ: He is not my  
21 witness. He's been subpoenaed by you.  
22 Okay?

23 That is no offense, Mr. Waterhouse,  
24 I'm -- I'm not -- okay. Anyway.

25 EXAMINATION

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1 WATERHOUSE - 10-19-21

2 this, their HR services as well.

3 Q. Okay. And did that include bill  
4 paying?

5 MR. MORRIS: Objection to the form  
6 of the question.

7 Q. Did the services that HCM provided  
8 to HCMS include bill paying?

9 MR. MORRIS: Objection to the form  
10 of the question.

11 A. Yes.

12 Q. And did the services that HCMLP  
13 provided to HCMS include scheduling upcoming  
14 bills?

15 MR. MORRIS: Objection to the form  
16 of the question.

17 A. Yes.

18 Q. And did HCMLP regularly pay -- cause  
19 to be paid the payments on loans HCMS had from  
20 HCMLP?

21 MR. MORRIS: Objection to the form  
22 of the question.

23 A. Yes.

24 Q. Typically -- if there is a  
25 typically, how far in advance of due dates did





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WATERHOUSE - 10-19-21

services.

1 WATERHOUSE - 10-19-21

2 loan payment that was due from HCMS to HCMLP in  
3 December of 2020?

4 MR. MORRIS: Objection to the form  
5 of the question.

6 A. I don't believe that payment --  
7 payment was made.

8 Q. Okay. And when HCMLP caused HCMS in  
9 the past to make loan payments, whose money did  
10 it use to make those payments?

11 MR. MORRIS: Objection to the form  
12 of the question.

13 A. It was the -- the money in HCMS's  
14 operating account would be made to that --  
15 those moneys would be used to make payment to  
16 Highland Capital Management.

17 Q. Okay. And Highland -- is it correct  
18 that Highland Capital Management personnel had  
19 the access to HCMS's accounts to be able to  
20 cause such payments to be made?

21 A. Yes, Highland personnel had access  
22 to those accounts.

23 Q. Okay. And so now for HCRE, whose  
24 money was used when HCMLP caused HCRE  
25 payments -- loan payments to Highland to be

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A. I believe the HCRE payment was made

Q. If it -- how is it the HCRE payment

A. Jim -- Jim called me and instructed

Q. Did he seem upset that -- that the

A. Yeah. On the note that was, you

Q. Okay. And did you make the -- cause

A. Yes.

Q. And did anyone else from HCM

A. Yes. It would have been Kristin

1 WATERHOUSE - 10-19-21

2 believe I'm an authorized signer. So I  
3 can't -- other personnel have to make payment  
4 from HCRE to -- to -- to -- to Highland.

5 Q. Okay. And in the conversation  
6 that -- that you had with Mr. Dondero when he  
7 requested the payment to be made, did you say  
8 to him words to the effect, Jim, this loan is  
9 going to stay in default, what are you making  
10 the payment for, anything like that?

11 A. No.

12 Q. In fact, did you have the impression  
13 from him that he thought that the loan would  
14 be -- the default would be cured by making the  
15 payment?

16 MR. MORRIS: Objection to the form  
17 of the question.

18 A. Did I get the impression from Jim  
19 Dondero that the loan would be cured if the  
20 payment from HCRE --

21 Q. Yeah, if that is what he thought.

22 MR. MORRIS: Objection to the form  
23 of the question.

24 A. I didn't get any impression from him  
25 on that at the time.



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1 WATERHOUSE - 10-19-21

2 you knew of the practice of giving forgivable  
3 loans to executives.

4 MR. MORRIS: Objection to the form  
5 of the question.

6 Q. Can you -- can you tell me what you  
7 recall about that practice?

8 MR. MORRIS: Objection to the form  
9 of the question.

10 A. Yes, so there were -- there were --  
11 during my tenure at Highland, there were loans  
12 or -- given to employees that were later  
13 forgiven at a future date and time.

14 Q. Okay. And when the loans were  
15 given, did the notes, to your recollection, say  
16 anything about the potential forgiveness term?

17 MR. MORRIS: Objection to the form  
18 of the question.

19 A. When you say "did the notes," did  
20 the promissory notes detail the forgiveness?

21 Q. Yes.

22 A. Not that I recall.

23 Q. And until such time as whatever was  
24 to trigger the forgiveness occurred, were the  
25 notes bona fide notes as far as you were

1 WATERHOUSE - 10-19-21

2 concerned?

3 MR. MORRIS: Objection to the form

4 of the question.

5 A. Yes, similar to -- yes.

6 Q. Okay. You were going to say similar  
7 to what?

8 A. Mr. Morris earlier today showed  
9 notes of the financial statements about various  
10 affiliate loans. I -- I -- I do recall these  
11 notes because I -- at that time personally  
12 worked on the -- the financial statements of  
13 Highland. That was, you know, in my role as a  
14 corporate accountant.

15 And there were -- those loans  
16 were -- to the partners were detailed in the  
17 notes to the financial statements, similar to  
18 what we went through earlier today in the prior  
19 testimony about what we saw with Highland  
20 and -- and -- and the -- and HCMFA.

21 Q. Is it fair to say that on Highland's  
22 balance sheet there were any number of assets  
23 that the value of which could be affected by  
24 subsequent events?

25 MR. MORRIS: Objection to the form

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WATERHOUSE - 10-19-21

of the question.

A. The accounting standard is you have estimate to the best -- you know, to -- to best of your ability, the fair value of an asset as of the balance sheet date under -- GAAP.

Q. Did -- strike that.

Okay. Give me a minute. I'm

close -- I'm close to done. Let me just go off and look at my notes for a second. So take two minutes.

VIDEOGRAPHER: We're going off the  
record at 7:02 p.m.

(Recess taken 7:02 p.m. to 7:03 p.m.)

VIDEOGRAPHER: We are back on the  
record at 7:03 p.m.

Q. Mr. Waterhouse, is it generally your understanding that people you work with now been asking the debtor for full and unrestricted access to their own former files?

MR. MORRIS: Objection to the form  
of the question.

A. Yes, I am -- I am generally aware.

Q. Okay. And do you think you could

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is that correct?

MR. MORRIS: Objection to the form

of the question.

A. I want to be -- yes, I -- there

is -- I'm being sued, again, on -- on something

that was agreed to with Mr. Seery and myself.

I don't -- I don't -- I don't own that claim.

Q. Okay.

A. To be transparent, I don't own that

claim. So it is not my personal property.

Q. Okay.

A. And -- and being the nonlawyer, I

don't know how I can get sued for something

that I don't owe or, like, I don't own

anything. I'm not the lawyer. But, I mean, if

that is -- if I'm understanding the facts

correctly.

Q. Okay. And the lawsuit that was

filed that names you, that was just filed

this -- this past week; is that right?

MS. DANDENEAU: Ms. Deitsch-Perez, I

do want to interrupt at this point because

just as I told Mr. Morris, that this is a

deposition about the noticed litigation.

1 WATERHOUSE - 10-19-21

2 I really don't want to go -- go

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3      afield --
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4 MS. DEITSCH-PEREZ: Yeah.

5 MS. DANDENEAU: -- and open up a  
6 whole new line of inquiry about the lawsuit  
7 or the -- the motion and the bankruptcy  
8 court. We will be here all night.

9 MS. DEITSCH-PEREZ: And I  
10 understand.

11           Q.       My -- my point is: Do you feel  
12       like -- like there is some effort by these  
13       parties related to the debtor to intimidate  
14       you -- not that you -- I'm not saying you are  
15       or you aren't.

16 But do you feel like there is some  
17 effort to intimidate you and maybe an effort to  
18 deter you from being as prepared as you might  
19 be in this deposition?

20 MR. MORRIS: Objection to the form  
21 of the question.

22           A.       I was -- I was surprised by the  
23       lawsuit, by me being named, because, again, I  
24       don't own the asset and things like that.  
25       Yeah, I just -- I want to move forward with my



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A. It was -- I think I testified to earlier when we talked about procedures policy, you know, again, I want to be informed of -- of -- of -- of -- of any payments that are going out. I want to be made aware of these payments, and that was just a general policy, not just for 2020.

A. Yes.

A. Yes.

A. I -- like I testified earlier, we have a corporate calendar that was set up, you know, to -- to provide reminders or, you know, of anything of any nature, whether it is tax returns or -- or financial statements or, you know, whatever it is, you know, to meet





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MR. RUKAVINA: Objection, form.

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A. No. The two payments I recall were point and HCRE.

Q. Okay. And those two payments --

A. Thank you for the correction. And those two payments were made because Mr. Dondero authorized those payments to be made; correct?

A. Yes.

Q. And they hadn't been made before because Mr. Dondero had not authorized to be made?

MS. DEITSCH-PEREZ: Object to the

A. Yes, because of these negotiations.

Q. Okay. Just a couple of more questions.

Did anybody, to the best of your  
on behalf of HCMFA, ever tell the  
CMLP was responsible for the mistakes  
made on the TerreStar valuation?

A. Did anyone from Highland on HCMFA's  
lf tell the SEC that Highland -- that  
and was responsible for there -- I just  
to make sure --

Q. It was a little bit different, so

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1 WATERHOUSE - 10-19-21

2 word "NexPoint" when he was saying don't make  
3 these payments?

4 MR. MORRIS: Objection to the form  
5 of the question, asked and answered.

6 A. Yeah, we were -- we were discussing  
7 advisor obligations. So it was -- you know, it  
8 was just obligations from the advisors.

9 And -- and he specifically talked  
10 about the NexPoint payment as well.

11 Q. Okay. And it is your testimony that  
12 he expressly told you not to make that NexPoint  
13 December 31 payment?

14 MR. MORRIS: Objection, asked and  
15 answered twice.

16 A. Yes, he -- he did, during that  
17 conversation.

18 Q. And did you ever follow up with him  
19 after that about whether NexPoint should or  
20 shouldn't make that payment?

21 A. I did not.

22 Q. Did you ever, on or about  
23 December 31, 2020, remind him and say, hey,  
24 this payment is due, what shall I -- what  
25 should I do?

1 WATERHOUSE - 10-19-21

2 A. I did not.

3 Q. So sitting here today, you -- you  
4 remember distinctly that Dondero in December of  
5 2020 expressly told you not to have NexPoint  
6 make that payment?

7 MR. MORRIS: Objection, asked and  
8 answered three times.

9 A. Yes.

10 Q. Can you say categorically it wasn't  
11 just some general discussion where he told you  
12 not to make payments?

13 MR. MORRIS: Objection, asked and  
14 answer four times.

15 MR. HORN: Four times now. Go for  
16 five.

17 A. Yes.

18 Q. Did you tell Mr. Seery that?

19 A. I don't believe I did. I don't  
20 recall.

21 Q. And was this an in-person discussion  
22 or telephone or email? Do you remember?

23 A. This was a phone -- a phone  
24 conversation.

25 Q. Okay. Would you have a record of --

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A. Yes, I don't recall having

conversations about, you know, those -- those entities.

Q. And, in fact, what was the tone that

Mr. Dondero had when he talked to you about the fact that HCRE and HCMS payments hadn't been made when he found out that they hadn't been paid?

MS. DANDENEAU: Objection to form.

MR. MORRIS: Objection to form.

Q. What was the tone he took with you?

A. Oh, it was -- it was -- it was -- it

was very negative. I mean, I think he cursed at me and he doesn't usually curse.

Q. Okay. And in your mind, is that

consistent with the fact that he was surprised  
that those payments hadn't been made?

MR. MORRIS: Objection to the form

of the question.

A. Yes.

Q. Okay. Thank you.

MR. MORRIS: I have nothing further.

Thank you so much, Mr. Waterhouse.

MR. HORN: I have no questions.

Subscribed and sworn to before me  
this            day of            2021.

-----



# C E R T I F I C A T E

Jusan S Klinger

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